

**IN THE  
SUPREME COURT OF INDIANA**

**CASE NUMBER:**

**ORDER AMENDING INDIANA RULES  
OF PROCEDURE FOR POST-CONVICTION REMEDIES**

Under the authority vested in this Court to provide by rule for the procedure employed in all courts of this state and this Court's inherent authority to supervise the administration of all courts of this state, Rule PC 1 and Rule PC 2 of the Indiana Rules of Procedure for Post-Conviction Remedies, are amended to read as follows (deletions shown by ~~striking~~ and new text shown by underlining):

**INDIANA RULES OF PROCEDURE FOR POST-CONVICTION REMEDIES**

**Rule PC 1. Post-Conviction Relief**

**Section 1. Remedy-To whom available-Conditions.**

...

(e) A petition seeking to present new evidence challenging the person's guilt or the appropriateness of the person's sentence, when brought by a person who has been sentenced to death and who has completed state post-conviction review proceedings, whether denominated as a petition filed pursuant to Ind. Code § 35-50-2-9(k) or not, is considered a Successive Petition for Post-Conviction Relief under Section 12 of this Rule.

...

**Section 3. Contents.**

(a) The petition shall be submitted in a form in substantial compliance with the standard form appended to this Rule. The standard form shall be available without charge from the Public Defender's Office, who shall also see that the forms are available at every penal institution in this State.

(b) The petition shall be made under oath and the petitioner shall verify the correctness of the petition, the authenticity of all documents and exhibits attached to the petition, and the fact that he has included every ground for relief under Sec. 1 known to the petitioner.

(c) The Clerk shall file documents and information excluded from public access pursuant to Administrative Rule 9(G)(1) in accordance with Trial Rule 5(G).

...

## **Rule PC 2. Belated Notice of Appeal - Belated Motion to Correct Error - Belated Appeal**

An “eligible defendant” for purposes of this Rule is a defendant who, but for the defendant’s failure to do so timely, would have the right to challenge on direct appeal a conviction or sentence after a trial or plea of guilty by filing a notice of appeal, filing a motion to correct error, or pursuing an appeal.

**Section 1. Belated Notice of Appeal.** Where a an eligible defendant convicted after a trial or plea of guilty fails to file a timely notice of appeal, a petition for permission to file a belated notice of appeal for appeal of the conviction may be filed with the trial court, where:

(a) the failure to file a timely notice of appeal was not due to the fault of the defendant; and

(b) the defendant has been diligent in requesting permission to file a belated notice of appeal under this rule.

The trial court shall consider the above factors in ruling on the petition. Any hearing on the granting of a petition for permission to file a belated notice of appeal shall be conducted according to Section 5, Rule P.C. 1.

If the trial court finds grounds, it shall permit the defendant to file the belated notice of appeal, which notice of appeal shall be treated for all purposes as if filed within the prescribed period.

If the trial court finds no grounds for permitting the filing of a belated notice of appeal, the defendant may appeal such denial by filing a notice of appeal within thirty (30) days of said denial.

**Section 2. Belated Motion to Correct Error.** Any eligible defendant convicted after a trial or plea of guilty may petition the court of conviction for permission to file a belated motion to correct error addressing the conviction, where:

(a) no timely and adequate motion to correct error was filed for the defendant;

(b) the failure to file a timely motion to correct error was not due to the fault of the defendant; and

(c) the defendant has been diligent in requesting permission to file a belated motion error under this rule.

The trial court shall not consider the merits of the motion, but shall determine whether there are grounds for allowing the belated motion to correct error to be filed. Any hearing on the petition shall be conducted according to Sec. 5, Rule PC 1.

If the trial court finds such grounds, it shall permit the defendant to file the motion, and the motion shall then be treated for all purposes as a motion to correct error filed within the prescribed period.

If the trial court finds no such grounds, it shall deny defendant permission to file the motion. Defendant may initiate the appeal of such a denial by the filing of a notice of appeal within thirty (30) days of the denial. Jurisdiction for such appeal shall be determined by reference to the sentence originally imposed.

**Section 3. Belated Appeal.** Any eligible defendant convicted after a trial or plea of guilty may petition the appellate tribunal having jurisdiction by reason of the sentence imposed for permission to ~~file~~ pursue a belated appeal of the conviction where he filed a timely notice of appeal, but:

(a) no appeal was perfected for the defendant or the appeal was dismissed for failing to take a necessary step to pursue the appeal;

(b) the failure to perfect the appeal or take the necessary step was not due to the fault of the defendant; and

(c) he defendant has been diligent in requesting permission to ~~file~~ pursue a belated appeal.

...

These amendments shall take effect January 1, 2005.

The Clerk of this Court is directed to forward a copy of this order to the clerk of each circuit court in the state of Indiana; Attorney General of Indiana; Legislative Services Agency and its Office of Code Revision; Administrator, Indiana Supreme Court; Administrator, Indiana Court of Appeals; Administrator, Indiana Tax Court; Public Defender of Indiana; Prosecuting Attorney's Council; Indiana Supreme Court Disciplinary Commission; Indiana Supreme Court Commission for Continuing Legal Education; Indiana Board of Law Examiners; Indiana Judicial Center; Division of State Court Administration; Indiana Judges and Lawyers Assistance Program; the libraries of all law schools in this state; the Michie Company; and the West Group.

The West Group is directed to publish this Order in the advance sheets of this Court.

The Clerks of the Circuit Courts are directed to bring this Order to the attention of all judges within their respective counties and to post this Order for examination by the Bar and general public.

DONE at Indianapolis, Indiana, this \_\_\_\_\_ day of September, 2004.

---

Randall T. Shepard  
Chief Justice of Indiana

All Justices concur.